

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Health	(2) MEETING DATE 10/25/2016	(3) CONTACT/PHONE Penny Borenstein / 781-5519	
(4) SUBJECT Introduction of an amendment to Title 8, Section 8.13.030 of the San Luis Obispo County Code, to extend the expiration date from March 31, 2018 to March 31, 2021 for Ordinance 3258: Moratorium on the Land Application of Treated Sewage Sludge/Biosolids; and find that the project is exempt from Section 21000 et seq. of the California Public Resources Code (CEQA). Hearing date set for November 8, 2016. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> 1. Introduce an amendment to Title 8, Section 8.13.030 of the County Code to extend the expiration date for Ordinance 3258: Moratorium on the Land Application of Treated Sewage Sludge/Biosolids from March 31, 2018 to March 31, 2021 and set November 8, 2016 as the date for a public hearing to review the ordinance; and 2. Find that the project is exempt from Section 21000 et seq. of the California Public Resources Code (CEQA); and 3. Authorize the County Clerk to publish the ordinance in a newspaper of general circulation, in its entirety, within 15 days after adoption. 			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input type="checkbox"/> Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input checked="" type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: <u>May 6, 2014, January 12, 2016</u>	
(17) ADMINISTRATIVE OFFICE REVIEW Morgan Torell			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Jeff Hamm, Health Agency Director
Penny Borenstein, MD, Health Officer/Public Health Administrator

DATE: 10/25/2016

SUBJECT: Introduction of an amendment to Title 8, Section 8.13.030 of the San Luis Obispo County Code, to extend the expiration date from March 31, 2018 to March 31, 2021 for Ordinance 3258: Moratorium on the Land Application of Treated Sewage Sludge/Biosolids; and find that the project is exempt from Section 21000 et seq. of the California Public Resources Code (CEQA). Hearing date set for November 8, 2016. All Districts.

RECOMMENDATION

It is recommended that the Board:

1. Introduce an amendment to Title 8, Section 8.13.030 of the County Code to extend the expiration date for Ordinance 3258: Moratorium on the Land Application of Treated Sewage Sludge/Biosolids from March 31, 2018 to March 31, 2021 and set November 8, 2016 as the date for a public hearing to review the ordinance; and
2. Find that the project is exempt from Section 21000 et seq. of the California Public Resources Code (CEQA); and
3. Authorize the County Clerk to publish the ordinance in a newspaper of general circulation, in its entirety, within 15 days after adoption.

DISCUSSION

The ordinance being introduced for amendment delineates acceptable use of land application of *biosolids* or *sewage sludge*, terms which are often used interchangeably. When properly treated and processed, sewage sludge becomes biosolids; the nutrient-rich organic materials resulting from the treatment of domestic sewage in a municipal wastewater treatment facility. Biosolids can be beneficial in agriculture when recycled and applied as fertilizer to improve and maintain productive soils and stimulate plant growth. Biosolids can also create risks to public health if not properly managed due to pollutants such as disease-causing organisms (pathogens), metals, or chemicals like medicines or synthetic products. At uncontrolled levels, pollutants can accumulate in soil or crops; however, pollutant levels can be controlled such that land application of biosolids may yield benefit.

With Board approval, the proposed amendment of the expiration date from March 31, 2018 to March 31, 2021 will be set for hearing on November 8, 2016.

Background – Near-term

In May of 2014, the Board extended Ordinance 3258: Land Application of Treated Sewage Sludge/Biosolids (hereafter referred to as the "interim ordinance"). The currently in place interim ordinance is scheduled to remain in effect until a permanent ordinance is enacted, or until March 31, 2018, whichever occurs first.

During 2015, Public Health's Environmental Health Services Division drafted a permanent ordinance and a CEQA review process was initiated in November 2015 with an Environmental Impact Report (EIR) Notice of Preparation (NOP). During the EIR/NOP process, the Planning and Building Department received comments from stakeholders that the scope of the proposed draft ordinance was inadequate because the draft failed to conform to prior Board directives and task force

recommendations. Respecting that there are diverse perspectives on the regulation of biosolids, County staff disagreed that the Board directives and task force recommendations were not followed. Subsequently, the Board asked for an update on the proposed draft land application of biosolids ordinance and EIR/NOP process after the comment period ended on December 18, 2015.

On January 12, 2016, an update on the proposed ordinance and EIR/NOP was presented to the Board of Supervisors. After stakeholder testimony and discussion about the potential cost of the EIR, the Board decided that the permanent land application of biosolids ordinance as presented in the hearing was not ready for adoption. Staff was directed to stop proceeding with the EIR and to continue with the interim ordinance.

Today's proposal to further extend the interim ordinance expiration date to March 31, 2021, will provide time for the County to further assess the ongoing scientific work being conducted by the U.S. EPA which is looking closer at the land application of biosolids health risk assessment issues, and gaining additional insight into alternative biosolids treatment and disposal methodologies. For example, the U.S. EPA is currently working to gain a better understanding of the fate and transport of pharmaceuticals and personal care products that might be found in land applied biosolids.

Background – Long-term

Since 1998, the issue of the land application of biosolids has been the subject of two separate efforts to guide public policy in San Luis Obispo County (for ease of readership, "treated sewage sludge/biosolids" is hereafter referred to as "biosolids"). Both efforts included public and local agency participation in working groups. Concern over a proposal in 1998 to apply biosolids to ranch property near San Miguel led to the first effort, namely the County Health Commission's formation of a task force. The Health Commission Task Force explored wastewater treatment and disposal issues as they related to federal, state and local regulations, with specific interest in the land application of biosolids.

On February 8, 2000, in a second effort, the Board directed the Public Health Department, Environmental Health Services Division, which resides in the Health Agency, to convene a public working group to consider options for managing the land application of biosolids. Pursuant to the Board's direction, Environmental Health Services (EHS) convened a working group that was referred to as the San Luis Obispo County Treated Sewage Sludge/Biosolids Land Application Task Force (hereafter referred to as the "EHS Task Force"). The EHS Task Force recommended creation of a local ordinance establishing more stringent requirements for the quality of land applied biosolids, as well as local control and oversight of how, when and where such material could be applied. The EHS Task Force completed its recommendations on October 26, 2001. Presentations were made to the Health Commission on December 10, 2001, and the Planning Commission on December 13, 2001 and January 24, 2002.

On March 12, 2002, the Board directed EHS to draft a local ordinance regulating the land application of biosolids based on the recommendations contained in the EHS Task Force report. In order to comply with Board direction, the EHS Task Force reconvened to draft an interim ordinance that would, among other things, limit the acceptance or processing of new land application projects beyond historical amounts of Exceptional Quality (EQ) biosolids until a local permanent ordinance could be completed.

EQ biosolids are the highest quality of biosolids as defined under the 40 CFR Part 503 Federal Regulations. Because EQ biosolids are highly treated and have very low levels of pathogens, trace elements and vector attraction, the U.S. EPA generally regards this material safe enough to be land applied like any other manure-type fertilizer.

On March 12, 2003, an interim ordinance was completed and sent to the Environmental Division of the Planning Department for California Environmental Quality Act (CEQA) review. The CEQA review process was completed on August 29, 2003, where it was determined the ordinance could not have a significant adverse effect on the environment and a Negative Declaration was issued.

The proposed interim ordinance was then introduced to the Board for approval in February of 2004, and subsequently enacted on March 2, 2004.

In April of 2004, EHS informed the Board that it was discontinuing development of a permanent land application of biosolids ordinance in order to address higher priority public health issues, including the impending arrival of West Nile Virus into the County.

EHS updated the County Health Commission on February 14, 2005 and January 9, 2006, regarding the performance of the interim ordinance since its enactment.

With the March 2, 2004 interim ordinance set to expire on March 2, 2006, the ordinance was extended for 48 months or until a permanent ordinance could be developed. On April 21, 2009 the Board voted to table the proposed permanent ordinance process due to concerns regarding the estimated cost of environmental review associated with the CEQA process. The cost of an environmental review at that time was estimated to be \$200,000. As a result, the Board decided to extend the existing interim ordinance to March of 2014, or until a permanent ordinance was enacted. The Board directed EHS to work with the County's local governmental entities that operate wastewater treatment plant facilities to determine if those entities would be willing to share in the cost of the permanent ordinance environmental review. It was determined that local governments were not interested in sharing such costs.

In May of 2014, the Board extended the interim ordinance which is currently scheduled to remain in effect until a permanent ordinance is enacted, or until March 31, 2018, whichever occurs first.

Interim Ordinance

The main premise of the interim ordinance is to limit the amount of land applied biosolids to historic levels and to only allow EQ biosolids to be used. Consistent with the availability of commercially bagged composted biosolids, the interim ordinance exempts the land application of biosolids used in compost. Composted biosolids in 40-pound bags are currently available at most retail nurseries and large hardware stores with nursery sections. This composted material is comprised of biosolids mixed with green waste, and can be applied by anyone without regulatory oversight. Laboratory tests conducted on locally composted biosolids have shown the material to be significantly below the Federal 503 Regulation limits, including levels for heavy metals. Done properly, the use of high quality biosolids in compost has been shown to be a safe and effective way to recycle this natural resource.

If the recommendation to extend the term is approved, it would result in the continuation of an ordinance that allows for the recycling of a natural resource at amounts that do not exceed historic levels of land application, protects public health and the environment, and allows for the notification of EHS when biosolids are proposed to be applied to land.

The interim ordinance was developed to limit the processing of new land application projects until a permanent ordinance could be completed. The purpose of the ordinance was to establish an interim moratorium on the land application of biosolids other than EQ. Further, it was the intent of the interim ordinance to ensure the quantity of EQ biosolids applied in San Luis Obispo County would not exceed historic levels.

Extending the Interim Ordinance:

- Defines biosolids, exceptional quality biosolids and persons regulated by the ordinance. Persons include any individual firm, association, partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity whatsoever.
- Remains in effect until March 31, 2021, or until a permanent ordinance is adopted, whichever occurs first.
- Requires notification of EHS 30 days prior to the land application of biosolids equaling or exceeding 5 cubic yards.
- Places a cap of 1,500 cubic yards on the cumulative total of exceptional quality biosolids that can be land applied in any 12-month period beginning with the adoption of the ordinance.
- Allows unused capacity to be carried over from the previous 12-month period.
- "Biosolids" as used in this ordinance also excludes biosolids composted with other organic products such as green waste and sold in bulk form that meets EQ requirements.

The original interim ordinance was sent to the Environmental Division of the Planning Department for California Environmental Quality Act (CEQA) review. The CEQA review process was completed and determined that the ordinance could not have a significant adverse effect on the environment and a Negative Declaration was issued. There are no changes proposed to the interim ordinance at this time. The only action is to extend the sunset date as stated in the

ordinance. Because there are no proposed changes to the ordinance other than the sunset date, and due to the age of the approved Negative Declaration, EHS has prepared an exemption from CEQA based on the general rule that CEQA is applicable only to projects that may have a significant impact on the environment. The proposed extension of the interim ordinance cannot have a significant effect because there is no change to the environmental baseline.

In summary, the staff recommendation is to amend the expiration date for County Ordinance 3258: Land Application of Treated Sewage Sludge/Biosolids from March 31, 2018 to March 31, 2021, and find the ordinance exempt from the provisions of CEQA.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel has reviewed and approved the proposed extension of the interim ordinance for form and legal effect.

Numerous state and local agencies, as well as private citizens, non-profit agencies and other interested parties were involved in the development of the original ordinance. They include the Agricultural Liaison Advisory Board, Air Pollution Control District, Agricultural Commissioner's Office, Cal Poly, ECOSLO, Environmental Division of County Planning Department, Regional Water Quality Control Board, San Luis Obispo County Farm Bureau, Morro Bay-Cayucos Wastewater Treatment Plant, City of San Luis Obispo Wastewater Treatment Plant, South San Luis Obispo County Sanitation District, City of Paso Robles Wastewater Treatment Plant, California Association of Sanitation Agencies, Synagro, University of California Cooperative Extension, San Luis Obispo County Health Commission, Sierra Club, Center for Sludge Information, San Luis Obispo County Water Resources Advisory Committee, San Luis Obispo County Integrated Waste Management Authority, CA Farm Bureau, Cornell University, U.S. EPA, and other interested parties.

FINANCIAL CONSIDERATIONS

Since enactment of the interim ordinance in 2004, there has been no land application projects submitted to the Department. Consequently, continuation of the ordinance is expected to have a minor impact to funding and staffing resources. As before, EHS anticipates using existing staff to administer the ordinance. An hourly rate will be used to cover the costs of administering the project permit review process and to conduct land application project oversight. Since EHS may not receive land application project submittals, and therefore no fees for services will be collected, the County General Fund will cover the costs of ongoing staff research about the safety of land application and innovative strategies to best utilize biosolids as a recyclable resource.

RESULTS

Since the enactment of the interim ordinance, no land application projects utilizing biosolids equal to or exceeding five cubic yards have occurred in the unincorporated area of the County. In addition, no complaints have been received associated with land applied biosolids.

Approval of the recommendation would result in the continuation of the interim ordinance that allows for the recycling of a natural resource at amounts that do not exceed historic levels of land application, protects public health and the environment, and allows for the notification of EHS when biosolids are proposed to be applied to land.

ATTACHMENTS

1. Existing Ordinance 3258: Land Application of Treated Sewage Sludge/Biosolids
2. Amended Ordinance 3258: Land Application of Treated Sewage Sludge/Biosolids
3. General Rule Exemption